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TRIAL OF JOSEPH NARCISSE CARDI- NAL, JOSEPH DUQUETTE, AND OTHERS.

(CONTINUED.)

Before proceeding any further, our read-
ers ought to be made acquainted with the
principal testimony brought against the
prisoners on the part of the Crown.

The 1st witness, J. L. Grant, of Lachine,
swore that on the 3d of Nov., he was
made a prisoner of the patriots, by Mr.
Joseph Duquette. He also incriminated
Mr. Frs. M. Lepailleur and Mr. Leandre
Ducharme.

The 2nd witness, John McDonald, a
very Magistrate, of Chateaugay, swore
that on the night of the 3d Nov., he was
forced to open the door of his house to a
band of armed patriots, at the head of
which was Jean Louis Thibert. He in-
culpated Messrs. Cardinal, Duquette, Le-
pailleur, Louis Guerin dit Dusault, Joseph
Lecuyer and Edouard Therien. He ad-
mitted that John Lewis Grant, the first
witness, was DRUNK all the time. Be-
sides the other prisoners, he also swore
against Jean Marie Thibert, Louis Lesiege
dit Louis Lesage dit Lavolette, Du-
charme, and Antoine Cote. He said that
on Saturday, the 10th Nov., Ducharme
was at Lapigeonniere, county of Lacadie,
escorting the prisoners to Napierville—
(mark this!)

The 3rd witness was George Oronhi-
tchka De Lorimier. He identified Cardi-
nal and Duquette, as having on the 4th
November, early in the morning, been at
Sault St. Louis to seize the fire arms be-
longing to the Indians.

The 4th witness, Ignace Delisle, alias
Kaneratahere (an Indian) swore against
Lepailleur and Louis Guerin Dusault.

The 5th witness, Joseph Tenihatie (an
Indian), swore against Lepailleur, Lecuy-
er and Therien, as being among a body of
armed men, on the 4th of Nov., near Sault
St. Louis.

This witness contradicts himself, even in
the opinion of the Court Martial.

The 6th witness, Pierre Reed, (son of
Antoine) implicates J. M. Thibert, Louis
Guerin Dusault, Cardinal, Duquette, Jo-
seph Lecuyer, Jean Louis Thibert, Joseph
Guimond, Antoine Cote, as being in the
expedition against Sault St. Louis.

The 7th witness, Pierre Reed (son of
Joseph), swore that Messrs. Cardinal, Du-
quette, Lecuyer, Jean Louis and Jean
Marie Thibert, Joseph Guerin Dusault,
Antoine Cote, and Frs. M. Lepailleur
were more or less implicated in the affair
of Sault St. Louis.

The 8th witness, Jacques Teronhihere,
(an Indian), says that on the 4th of Nov.
early in the morning, he saw near the
Sault St. Louis, Cardinal and Duquette
unarmed; Lepailleur, Guerin, and Cote,
armed.

The 9th witness, Narcisse Bruyere, a
blacksmith, of Chateaugay, who had been
in the patriot army, swore against Messrs.
Cardinal, Duquette, Lepailleur, Lesiege,
Jean Louis and Jean Marie Thibert,
Guerin dit Dusault, and Therien, as being
under arms at Chateaugay on the night of
the 3d Nov., and the next morning at
Sault St. Louis.

Here closed the evidence on the part of
the Crown; and after the prisoners had
duly protested against arguing before the
court as constituted, and after this protest
had been set aside by that illegal body, the
following witnesses were heard in favour
of the prisoners:—

1st, Jean Loisel, a farmer of Chateau-
gay, testified that on the 4th of Nov. he
was with Jean Marie Thibert, who had
then left the patriots; it was then about

half past two, p. m. and that a man named
Bastien Villamme had menaced Jean Marie
Thibert with instant death if he did not
follow him to the patriot camp, which
Thibert did immediately. Gave a good
character to Messrs. Duquette, Lepailleur,
Guimond, Lesiege, Cote and Therien,
whom he knew as peaceable and quiet
citizens.

2nd, Joseph Loisel, gave a good char-
acter to Mr. Cardinal, whom he had
known more than 15 years. He also gave
a good character to Ducharme, Guerin
and Therien. He swore that J. M. Thi-
bert was forced by some person armed to
go to the patriot camp.

3d, Paul Allene gave a good character
to all the prisoners, but the court refused
to hear him, as they said he was saying
the same thing as the other witnesses, in
behalf of the prisoners.

4th, Pierre Jacques Beaudry, one of the
clerks of the Montreal jail, said that Leand-
re Ducharme, whom John McDonald, the
second witness for the Crown, had said on
his oath to have seen on the 10th Nov. at
Lapigeonniere, county of Lacadie, had
been lodged in the Montreal jail on the 7th
of November, and that during two nights
since his imprisonment he had absented
himself from jail under the guard of the
Provost-Marshal, but cannot say where he
went.

5th John Wilson, Provost Marshal,
said that on the nights of the 28th & 29th
Nov., Ducharme had slept with his fellow
prisoners at Pointe a Calliere.

6th Laurent Latour, of Lachine, swore
that he had seen Ducharme at Lachine on
Saturday the 3d of Nov., and that he had
spent the evening with him at a cousin's
house. The next day, (Sunday) he saw
Ducharme at the church door. This wit-
ness contradicts the testimony of John
Lewis Grant, the first witness of the
Crown, who swore that Ducharme was
at Chateaugay on Saturday evening and
Sunday morning. He also contradicts the
testimony of John McDonald, the 2nd
witness of the Crown.

7th Michel Roy Portelance, of Lachine,
swore that he saw Ducharme at Lachine
on the 4th Nov., between 11 o'clock and
noon. There is no ferry between Cha-
teaugay and Lachine on the Sundays.
The wind was so strong on the night of
the 3d Nov., that it was impossible for
Ducharme to cross to Chateaugay.

8th, Elizabeth St. Denis Widow Bou-
dria, of Chateaugay, did not see Ducharme
at Chateaugay, on the 4th Nov., contra-
dicts the testimony of John McDonald,
the 2nd witness of the Crown, who said
that it was Ducharme, who came to him
(John McDonald) to Mrs. Boudria's
house; but she cannot recollect who took
away the prisoner. Says that John Lewis
Grant, the first witness of the Crown, was
DRUNK all the time.

9th, Vital Dumouchelle said that he
was sent for on the 4th Nov.; in the morn-
ing to mount guard, and that he was
forced to go—he was immediately taken by the
Police-men and thrown into jail.

10th, Alexis Mesnard.—The testimony
of this witness soon closed, and brought no
new light upon the subject.

11th, Messire Jean Bte. Labelle, curate
of Chateaugay, gave a good and very
respectable character to Messrs. Cardinal,
Duquette, Lecuyer, J. L. Thibert, who
had been made a churchwarden. He also
gave a good character to all the prisoners,
except Ducharme, whom he knew not;
the prisoner belonged to Lachine.

12th, Pierre Rochon, farmer of Chateau-
gay, swore that Jean Marie Thibert had
been to his house on the 5th Nov., and
had been concealed in the woods till the
10th. This testimony is in contradiction
to what John McDonald, the second wit-
ness for the Crown, said. McDonald had
sworn that Jean Marie Thibert was with
the patriots on the 10th, at Lapigeonniere,
county of Lacadie.

13th, Joseph Conillard, Commissioner
of Small Causes, Justice of the Peace,
Merchant and Capt. of Militia of Cha-
teaugay,—says that in going to the Court

House with several other witnesses, John
McDonald, the 2nd witness of the Crown,
joined them and asked them "where are
you going to?" the others who were with
him answered "we are going to give our
testimonies according to the command of
the Court." Then he said to us "if you
do not go away, I shall send you to jail."

The Court recalled John McDonald, the
2nd witness of the Crown, who in his se-
cond examination—confessed that he was
so confused and strangled that he was not
certain that Ducharme was among the
armed patriots at Lapigeonniere, County of
Lacadie, on the 10th November.

A. P. Hart, Esquire, joins Messrs. Mo-
reau and Drummond, for the defence of the
accused.

Thursday, 6th Dec. 1839. }
10 o'clock, A. M. }

Mr. Drummond is allowed to address the
court, as follows, and Mr. Hart joins him
in reading the comments, which form part
of the address:—

Gentlemen of the Court,

"Arraigned before a tribunal, hitherto
unknown to all without the precincts of a
barrack or the limits of a camp; so formi-
dable in appearance, so vague in its char-
acter, so unsettled in its proceedings, and
called upon to answer for life and liberty,
or death and opprobrium to our posterity,
we dared to demand the right of every
British subject: a trial by his peers; we
beg solemnly, but respectfully, to protest
against being compelled to enter into our
defence, before a tribunal whose right to
try us, as civil subjects of the crown of
England, we could not recognize; and in
so doing, we acted in accordance with a
principle maintained in every court of jus-
tice in the known world, not solely in
matters where lives, but even where the
most unimportant rights of individuals are
at stake, namely: that the jurisdiction of
such court may be questioned by the per-
son cited before it, and the decision of the
tribunal required, as to the absence or exis-
tence of the jurisdiction so shadowed with
doubt. This declaration was deemed an
insult! Gentlemen of the court, we meant it
not as such. Men placed in the awful sit-
uation in which we stand, have no disposi-
tion to insult even the meanest of their
fellow-creatures; much less to proffer out-
rage to a formidable tribunal, arrayed in
judgement against them, and prepared to
decide upon their fate. With regard to
you, gentlemen, we impute it not to
blame, if we have been arraigned under
these forms. We are aware that the
power you now wield, has not been
claimed by you; that you have not ar-
rogated to yourselves the right to judge
us; but we dared to assert our immunities
as British subjects, to affirm that the au-
thority from which you hold your man-
date, had overstepped the limits prescribed
to it by a superior power, with an eye
ever watchful over the liberties and privi-
leges of all who owe it allegiance, had for-
bade even the slightest interference with
the forms hitherto adopted in this country,
in the trial of supposed criminals. And
therefore, we called upon you to pause, ere
you proceeded to enregister a judgment
against any one of us, not for ourselves
alone, nor in the names of our wives and
children, who, under presumption of our
guilt, have been banished from their
homes, by the brand of the incendiary, to
seek the roof of charity, in the name of
that God who protects the shelterless; not
only on behalf of the hundreds who, lin-
gering like ourselves in the dark dungeons
whence we have been dragged hither in
chains, awaited with anxious ear and beat-
ing heart, a decision to them of such vital
importance, but also in the names of half
a million of our fellow countrymen, any
one of whom may, at a moment's warning,
on a bare shadow of evidence, be cited be-
fore you in judgment, to be surrounded in
that dread hour, by all that can appal,
deprived of all that can support the human
heart in such a situation, and utterly strip-
ped of that armour with which the humanity
of the English law, as extended to this
province, had hitherto encircled the accused.
But the fiat has gone forth! You have
decided (or rather you have assumed) that
you are duly empowered to judge us. As
we must, therefore, for the present, submit
to the decision of a military tribunal, we
deem ourselves fortunate in beholding, in
the persons of our judges, many whose
high reputation sufficiently warrants us
that they will not stain their laurels with
aught savouring of injustice, and others
who, bearing on their countenances the
impress of high aspirations, will not cloud
their rising fame, by allowing any precon-
ceived opinions which the breath of malice
may have wafted to their ears, to influence
the decision which they have solemnly
pledged themselves before Heaven, to ren-
der according to the evidence. No, gen-
tlemen of the court, in your consideration

of the case now before you, you will dis-
card from your memory all recollection of
recent events; you will shew to the world,
that your minds are above being tainted
with prejudice; you will set at defiance the
blood-thirsty cravings of that portion of
public opinion, which, alone, at this mo-
ment is not mute, and which so petempro-
torily demands not punishment to the guilty,
but death to the accused; and you will be
governed in your deliberations by the fol-
lowing propositions, upon which, before
commenting separately upon the evidence
adduced, as well against, as in favour of
each of us, we beg to rest our defence:—

Firstly, The rules and doctrine of evi-
dence, as admitted by law in all criminal
cases, or on pleas of the crown, are ad-
hered to in the same manner upon trials of
courts martial, the only exceptions being
where the proceeding have been otherwise
regulated by the statute.

Secondly, That cases of High Treason,
being in no wise contemplated by the Sta-
tute, either as to the mode of trial, or the
mode of punishment, must be regulated by
the aforesaid rules and doctrine of evidence
before Courts Martial, (if such Courts can
ever be competent to take cognizance of
offences of that nature.)

Thirdly, That two lawful and, (to use
the language of the old authors,) *provea-
ble* witnesses are required, to convict a
prisoner in all such cases of High Treason.

Fourthly, That there exists no crime
where the will counteracts the deed; or in
other words, that threats and menaces,
duress per minas, which induce fear of
death or of bodily harm, take away for
that reason the guilt of apparent crime, at
least before the human tribunal.—See
Blackstone, vol. 4, p. 29, Edition of 1795.

We give below the comments of Messrs.
Leandre Ducharme, Jean Marie Thibert,
Joseph N. Cardinal, Joseph Duquette,
Lepailleur, Guimond & Dusault, to show
to our readers how much confidence could
be put in the witnesses brought by the
Crown. The first witness, John Lewis
Grant was, according to evidence adduced,
drunk during all the trouble; and the
second, John McDonald, was so confused
and troubled that he swore to Ducharme
and J. M. Thibert, being at Lapigeonniere,
County of Lacadie, whilst in fact they
were in the jail of Montreal! Such was
the evidence for the prosecution against
these unfortunate men.

Comments of Leandre Ducharme.

It has been stated by John Lewis Grant,
the first witness on the part of the Prose-
cution, that he saw me in arms at Cha-
teaugay, on his arrival there, at an early
hour, in the evening of the 3d of Nov.
last. It is not astonishing, (however to
be regretted,) that a man who was, on
that occasion, (as it was proved by Mrs.
Boudria,) in a state of intoxication, should
make a statement so false, so positively
disproved by two unimpeachable witness-
es, with whom I spent that night and a
part of the following day, up to noon, in
the parish of Lachine, on the other side of
the lake, and at the distance of three
leagues from the place where Grant pre-
tends he saw me. But, that another wit-
ness whom we must presume to have been
in his sober senses, since nothing to the
contrary has been proved; an individual
invested with the sacred character of a
magistrate, should so far forego his duty
as a Christian, bound "not to bear false
testimony against his neighbour," as not
only to declare positively that I was in
arms at Chateaugay, on the 4th of Nov.,
at dawn of day, but also, on Saturday the
10th; although it has been proved by my
witnesses, beyond a shadow of doubt, that
on the 4th, at that hour, I was at Lachine,
and on the 10th, in the common goal of
this district, which I entered on the 7th of
that month, and have since inhabited. Mr.
McDonald presumed, no doubt that the
close confinement which I am subjected to,
would preclude all possibility of evidence
being procured to rebut these statements;
that none but the eye of the Unseen would
be enabled to detect a fraud so well calcu-
lated to effect his nefarious designs; but,
thanks to my kind friends, ample means
been afforded me, not only to convince
you, Gentlemen, of the falsity of his testi-
mony with regard to myself, but, doubtless,
to induce you, likewise, to reject all his
testimony. True, after having heard his
evidence contradicted by my witnesses,
Mr. McDonald stated, in answer to a
question proposed to him by the Court,
that, owing to the excitement and confu-
sion of the moment, he might have fallen
into error, in stating that he saw me on
the 10th. Such an error might possibly
have occurred, were that statement taken
alone; but when considered in connexion
with the conversation which he asserted
he had with me, on that occasion, the pos-
sitive averment that I was the leader of his

escort, the resentment and partiality dis-
played by him, while giving evidence a-
gainst us, and the threats he held out to
our witnesses, to intimidate and deter
them from appearing in our behalf, his
false assertions cannot, by any sketch of
charitable feeling, be attributed to a mere
lapse of memory. The above statement,
made by John Lewis Grant and John
McDonald, the only witnesses who have
attempted to impeach my character, hav-
ing been thus directly contradicted and
disproved, there remains of record against
me but one assertion, made by Mr. Mc-
Donald. That assertion, unsupported, as
it is, by the testimony of any other wit-
ness would form no legal proof to support
an accusation of this nature, even under
the very improbable supposition that the
Court would feel disposed to give the
slightest credence to any portion of Mr.
McDonald's evidence. I, therefore, await
with confidence, at your hands, Gentlemen
of the Court, that acquittal which will re-
store me to the arms of an aged parent,
whose grey hairs may not, I trust, go
down in sorrow to the grave.

Comments of Jean Marie Thibert.

Gentlemen,
I am another of the prisoners who have
been so decidedly marked out by Mr.
McDonald, in his evidence, as having been
in arms during the whole time that he was
at Chateaugay a prisoner; yet, gentlemen,
strange to say, I was, as I have proved by
Pierre Rochon, a fugitive, and concealed
in different parts of the country, above the
village of Chateaugay, from the 4th until
the 10th of November. It is, however,
not astonishing, that Mr. Donald's evi-
dence should be so flatly contradicted re-
specting myself, when it has been so pos-
itively set aside with regard to a fellow-
prisoner, Ducharme, whom he distinctly
swore to have commanded the party which
proceeded to Lapigeonniere on the 10th;
although, at that very time, Ducharme
was a prisoner in the Montreal jail. I
must beg to be allowed, in order to shew
the incredible character of Mr. McDonald's
testimony, generally to weigh, even more
heavily than my fellow-prisoner has done,
upon that part of his evidence; and, should
the court be of the same opinion as I am,
it must be compelled, in justice to the pri-
soners, in the interests of truth, totally to
reject the testimony of that witness, not-
withstanding the apparent respectability of
his character.

You will recollect, gentlemen, that Mr.
McDonald calmly and coolly swore that
Ducharme was the one that came into the
room where he was imprisoned, and told
them that the Americans had taken Na-
pierville, ordering them, at the same time,
to prepare to go thither; that he was the
one who caused them to be tied two by
two, and put into carts. But, after having
ascertained that the *alibi* was clearly
proved, he came before you again, and
stated that, owing to the hurry and con-
fusion, and the number of armed men, he
might have been mistaken as to the person
referred to on that occasion. Gentlemen,
is not that too strange an absurdity to be
believed? Another individual, who comes
alone into the room, to relate an event of
such importance, who ties the witness,
who escorts him from Chateaugay to La-
pigeonniere, to be mistaken for the man
whom the witness declared he had seen
during all the week, actively engaged, and
in the rebel ranks! Gentlemen, Du-
charme's is not a face to be mistaken for
another; his is not a countenance to be
easily forgotten. Mr. McDonald's desire
of revenge for his own wrongs, can alone
explain his testimony. To that revenge,
Ducharme and I were both to be sacrifi-
ced. According to his statement we were
both drilling; we were both in arms all
the week; when, in fact (as it has been clearly
proved), the one was in prison, the other
concealed in the woods. Thus, gentlemen,
the evidence of Mr. McDonald, regarding
me, being set aside, (as it must be by you
all) what remains against me?—Pierre
Reed proves that I was one of the band
that went to Caughnawaga; that I or-
dered him to the Sault, and that I was
armed with a gun. Gentlemen, this is
false. Does this evidence agree with that
of the two Loiselles, both of whom proved
that, when trying to avoid being forced to
join the insurgents, I was flying towards
my home, when arrested by one Villamme,
and forced by threats, even at the muzzle
of a gun, to go to the camp? Bruyere
also states that he saw me on the way to
the Sault, but unarmed. The evidence of
these witnesses, even though it were not
so contradictory as it is, would still, from
the circumstance of their being accomplices
in the crime imputed to me, be insufficient
in law to convict me of high treason,
when unsupported, as it is, by other testi-
mony. I, therefore, pray an acquittal.

(To be continued.)

There is said to be a man in Indiana,
who is 120 years of age and has a son
precisely 107 years younger than himself.